

REMARKS / ARGUMENTS

Claim Rejections Under 35 U.S.C. § 102:

Claims 11 and 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Russel, Sr. et al. '837. Applicants respectfully submit that claims 11 and 12 are not anticipated by Russel, Sr. et al. '837.

Applicants have amended claim 11 to now include limitations that had been previously found in claims 13, 15, 16 and 21. Since at least claims 13 and 15 have not been rejected as being anticipated by Russel, Sr. et al. '837, they must contain elements that are novel with respect to Russel, Sr. et al. '837. Therefore, claim 11 must now be novel with respect to Russel, Sr. et al. '837, thereby rendering these rejections moot. As claim 12 is dependent upon claim 11, the rejection as related to this claim is moot as well.

It is not explicitly stated that claims 16-18, 20- 22, and 29 are actually rejected, nor is an unambiguous basis for any such an unstated rejection, therefore it is unclear to the Applicants how to address these issues. As claims 16 and 21 have been cancelled, any rejections are moot as pertains to them. Since claim 11 is free of the prior art as discussed above, and as claims 17, 18, 20, and 22 are all dependent upon claim 11, they are likewise free of the prior art. Claim 29 is an independent claim, and since the basis of any possible rejection by the Examiner is unclear, Applicants are uncertain as to how to respond.

Claims 11, 13, 15, and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jonsson et al. '208. Applicants respectfully submit that claims 11, 13, 15, and 19 are not anticipated by Jonsson et al. '208.

Applicants have amended claim 11 to now include limitations that had been previously found in claims 13, 15, 16 and 21. Since at least claims 16 and 21 have not been rejected as being anticipated by Jonsson et al. '208, they must contain elements that are novel with respect to Jonsson et al. '208. Therefore, claim 11 must now be novel with respect Jonsson et al. '208, thereby rendering these rejections moot. As claim 19 is

dependent upon claim 11, the rejection as related to this claim is moot as well. As claims 13 and 15 have been cancelled, any rejections are moot as pertains to them.

It is not explicitly stated that claim 14 is actually rejected, nor is an unambiguous basis for any such an unstated rejection, therefore it is unclear to the Applicants how to address this issue. Since claim 11 is free of the prior art as discussed above, and as claim 14 is dependent upon claim 11, it is likewise free of the prior art.

Claim Rejections Under 35 U.S.C. § 103:

Claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Russel, Sr. et al. '837 in view of Dubois et al. '176. Applicants respectfully submit that claims 23-26 are not unpatentable over Russel, Sr. et al. '837 in view of Dubois et al. '176.

Claim 11 has been amended to incorporate elements that are not found in Russel, Sr. et al. '837, and Dubois et al. '176 fails to remedy these deficiencies. Hence, the rejections of claims 23-26, which are dependent upon claim 11, are rendered moot.

It is not explicitly stated that claim 28 are actually rejected, nor is an unambiguous basis for any such an unstated rejection, therefore it is unclear to the Applicants how to address these issues. Claim 28 is dependent upon claim 27. Claim 27 is an independent claim, and since the basis of any possible rejection by the Examiner is unclear, Applicants are uncertain as to how to respond.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Russel, Sr. et al. '837 in view of Jonsson et al. '208. Applicants respectfully submit that claims 23-26 are not unpatentable over Russel, Sr. et al. '837 in view of Jonsson et al. '208.

Applicant respectfully disagrees with the Examiner's comment that Jonsson et al. '208 discloses the use of a proportional valve arranged on the gas circuit which is controlled by control means cooperating with a man/machine interface. Jonsson et al. '208 does not disclose a device that comprises "a proportional valve being arranged on said internal circuit, said valve being controlled by control means cooperating with a man/machine

interface.” In contrast, Jonsson et al’ 208 discloses a device that comprises a non-return valve. One of ordinary skill in the art would know that a non-return valve and a proportional valve serve entirely different process functions.

In contrast with the instant invention, Jonsson et al. ‘208 discloses that this non-return valve provides “the working pressure of the lung ventilator a constant value.” (Column 3, Lines 7-8). The skilled artisan would find that Jonsson et al’ 208 discloses a valve that is not a proportional valve, and one that is not controlled by control means cooperating with a man/machine interface.

Furthermore, Applicants would like to respectfully point out that the Examiner has overlooked a key point that is that the device of Jonsson et al’ 208 is not portable, is not compact, and therefore not one that is adapted to use in emergency situations.

This makes a great difference because the goal of the present invention is to have a device that is useable in emergency situations, i.e. having a small size, being easily transportable by a doctor or similar even when the access is difficult etc... (See specification on page 2, lines 5-14)

This is clearly not the case with the device disclosed in Jonsson et al’ ‘208’s, which is clearly an apparatus that is useable only in a hospital, which is not compact and rather heavy. Such a device is not useable on the field.

This can be clearly understood when reading column 2, line 5 of Russel, Sr. et al. ‘837, where it is explained that the prior art devices cannot be used when supplying anaesthetic agents. This means that, in contrast of that prior art, the apparatus of Russel, Sr. et al. ‘837 should be useable for anaesthesia purposes, which is typically something that is done only in hospitals and that requires sophisticated and heavy apparatuses.

Hence, a skilled artisan would not have had any reason to consider the teaching of Jonsson et al. ‘208 for modifying the device of Russel, Sr. et al. ‘837 as both documents concern “opposite” concepts, i.e. an apparatus useable only in hospital which is heavy and not transportable, and dedicated to realize anaesthesia acts *versus* a device that is

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light and transportable on emergency situations for providing oxygen to the wounded people.

In other words, there was no incentive for a skilled artisan to apply the teaching of Jonsson et al. '208 to the apparatus of Russel, Sr. et al. '837 and, even if done, he would not have reached the solution of the present invention as none of these documents teaches the use of a proportional valve arranged on the gas circuit which is controlled by control means cooperating with a man/machine interface.

CONCLUSION

In view of the current amendments, the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited.

Should the Examiner believe that a telephone call would expedite prosecution of this application, he is invited to call the undersigned attorney at the number listed below.

Respectfully submitted,



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Date: February 14, 2005

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage on an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14th day of February, 2005.


Diana Guzman